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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 25 2003

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C.§ 1153(b)(1)(C)

IN BEHALF OF PETITIONER: [redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) after review of the evidence dismissed the appeal. The matter is now before the (AAO) on a motion to reopen. The motion will be granted. The petition will be denied.

The petitioner is a corporation organized in the State of Illinois and is engaged in the import and export business. It seeks to employ the beneficiary as its president. Accordingly, it endeavors to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(C), as a multinational executive or manager.

The director determined that the petitioner had not demonstrated that the beneficiary had been and would be employed in a primarily managerial or executive capacity.

On motion, counsel for the petitioner indicates that it is submitting additional information to establish that the beneficiary directs the management of the organization and does not perform the day-to-day functions of the petitioner. The additional information submitted by counsel is information that the petitioner hired two additional employees in May of 2000. Counsel also provides a "clarification" of the job duties of a third individual who counsel claims the petitioner retained as an employee after her contract expired. Counsel asserts that the beneficiary directs and manages the activities of these employees.

Counsel's assertions are not persuasive. The petition was filed in December of 1999. At that time the petitioner employed only the beneficiary and had a contract for services with one other individual. As noted by the AAO, the petitioner did not make clear what services the contractor supplied to the petitioner. The hiring of additional employees, subsequent to the filing of the petition, although a new fact in this proceeding, does not contribute to a finding of eligibility. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Counsel's attempt to clarify the contractor's duties also does not contribute to a finding of eligibility. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 BIA 1980). Moreover, the petitioner does not provide independent evidence that it retained the contractor after her contract had expired. Going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has not submitted sufficient evidence to overcome

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the initial determination of the director and the determination of the AAO on appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decisions of the director and the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of May 21, 2001 is affirmed. The petition is denied.